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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-193322

DATE December 11, 1979

MATTER OF: Gregory J. Abbott

DIGEST: Transferred employee's [claim for subsistence expenses] while occupying temporary quarters was reduced by agency from \$879.37 to \$659.38. Agency considered what reasonably prudent person would expend in the geographic area, employee's dietary needs, and economic status in making reduction and compared meal expenses to those found in statistical references of United States Department of Agriculture. 42
Agency action was not clearly erroneous, arbitrary, or capricious. GAO will not substitute its judgment for that of agency. See 55 Comp. Gen. 1107 (1976); amplified, 56 Comp. Gen. 604 (1977).

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Mr. Leon J. Boyce, Chief, Accounting Section, Internal Revenue Service (IRS), Department of the Treasury, has asked us to determine whether the IRS correctly reimbursed an employee, Mr. Gregory J. Abbott, for his meal expenses while he occupied temporary quarters incident to a transfer of his official duty station. Since the record does not show that the action of the IRS in determining Mr. Abbott's level of reimbursement was clearly erroneous, arbitrary, or capricious, we will not substitute our judgment for that of the employing agency. 4

In his letter of submission of October 19, 1978, Mr. Boyce states in pertinent part as follows:

"Mr. Abbott claimed \$450.39 for meals for the first ten-day period; \$226.84 for the second ten-day period and \$202.14 for the third ten-day period. We reimbursed Mr. Abbott \$659.38 for meals covering the 30 day period. We based our disallowance on your decision #B-185948, dated 5/12/76.

"Mr. Abbott's family consists of his wife and 12 year old son. Temporary quarters were obtained in furnished accommodations with cooking facilities.

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"The claim appears to be unreasonable and we are submitting the voucher to you for a determination of correction of payment."

Enclosed with the above letter was the original reclaim voucher with a memorandum dated September 5, 1978, to the General Accounting Office from Gregory J. Abbott stating:

"Enclosed please find an original travel voucher showing a balance of \$106.83 which reflects the amount in contention between myself and the Internal Revenue Service Fiscal Section.

"It is my feeling that the decision by the Fiscal Section was arbitrary and capricious.

"I request a review of my voucher by the General Accounting Office for a decision."

Mr. Abbott urges that the agency reconsider its disallowance based on the need for a diet beyond normal for himself and his son together with the family income and living standards history.

In a supplemental report of October 26, 1979, the Chief, Accounting Section of the IRS, advised us that upon the initial filing of his claim on September 9, 1976, the IRS refused to reimburse Mr. Abbott for any of his meal expenses. The report states that the agency determined the claimed amounts for meals on the voucher to be unusually high for the geographic area and not indicative of expenses which a reasonably prudent person would make. The IRS considered Mr. Abbott's contentions regarding the dietary needs of himself and his family in regard to his economic status. Their cost comparison was based on the food expenses set forth in United States Department of Agriculture (USDA) statistics for the purchasing and consuming of food in the Washington, D.C. area. In rejecting the food expenses, the IRS asked Mr. Abbott to adjust his expenses by a reasonable amount; but, the IRS did not mandate what revised amount should be. Under protest, Mr. Abbott filed a revised voucher reducing his food expenses by \$220.

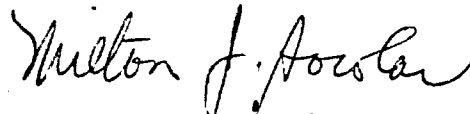
The reimbursement to employees of the expenses of subsistence while occupying temporary quarters is governed by the provisions of chapter 2, part 5 of the Federal Travel Regulations (FTR)

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FPMR 101-7 (May 1973). These regulations authorize reimbursement only for the actual subsistence expense incurred provided they are incident to the occupancy of temporary quarters and are reasonable as to amount. FTR para. 2-5.4a. It is the responsibility of the employing agency, in the first instance, to determine that such expenses are reasonable in light of the circumstances of each individual case. Jesse A. Burks, 55 Comp. Gen. 1107, 1110 (1976); amplified 56 Comp. Gen. 604 (1977). The latter decision provided for upward adjustment of allowable subsistence in accordance with Bureau of Labor Statistics equivalence scales. As set forth in Burks, we will not substitute our judgment for that of the agency, in the absence of evidence that the agency's determination was clearly erroneous, arbitrary, or capricious.

Here we find no data to show that the agency reduction was clearly erroneous, arbitrary, or capricious.

Accordingly, the reclaim voucher may not be certified for payment.



For the Comptroller General
of the United States